LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7108
BILL NUMBER: HB 1008

NOTE PREPARED: Feb 13, 2006
BILL AMENDED: Jan 31, 2006

SUBJECT: Public-Private Agreements for Transportation.

FIRST AUTHOR: Rep. Borror
FIRST SPONSOR: Sen. Meeks

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions.

Motor Vehicle Highway Account: The bill establishes the Major Moves Construction Fund. It provides for the distribution of $50.0 M per year during 2006, 2007, and 2008 from the Major Moves Construction Fund to the Motor Vehicle Highway Account (MVHA). It also provides that this money is to be distributed to counties, cities, and towns and used for the same purposes as other distributions that counties, cities, and towns receive from the MVHA

Public-Private Agreements: It amends the current laws concerning toll roads and tollways and adds new provisions to authorize the Indiana Finance Authority (Authority or IFA) to enter into public-private agreements with private entities (operators) concerning:
(1) toll road projects; and
(2) tollway projects, roads, and bridges.

It provides that the public-private agreements may be for any combination of the planning, acquisition, construction, improvement, extension, operation, repair, maintenance, and financing of projects. It provides that a public-private agreement is subject to the approval of the Governor after review by the Budget Committee.

It establishes procedures for selection of operators by the Authority.

Toll Rate Setting: It permits the Authority to establish user fees and tolls, including maximum tolls and user fees and criteria for the adjustment of those maximums. The bill provides that before July 1, 2016, the tolls charged by an operator of the Indiana Toll Road for certain passenger motor vehicles may not exceed the tolls that were in effect January 1, 2006.

Moral Obligation: It provides that, with the approval of the Budget Director after review by the Budget Committee, a public-private agreement may include a moral obligation of the state to pay certain costs incurred under the agreement.

Electronic Toll Collection Systems: It provides that a public-private agreement may include provisions concerning electronic toll collection systems and photo- or video-based toll collection enforcement systems.

User Fees and Enforcement Procedures: It authorizes the Authority to adopt emergency rules concerning user fees under a public-private agreement and enforcement procedures and assessments for failure to pay required tolls, including electronic and photo- or video-based collection enforcement.

Northwest Indiana Regional Development Authority Payments: It provides that certain payments required to be made to the Northwest Indiana Regional Development Authority (NWIRDA) upon the sale or lease of the Indiana Toll Road may be made from the state General Fund or the proceeds of a public-private agreement (current law provides for payment only from the state General Fund).

Property Tax Exemption: It provides that property leased or acquired by an operator for a public-private project is exempt from property taxes.

Income Tax: It provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities.

Use of Revenues from Toll Road Revenues: It provides that revenues from a public-private agreement with respect to a toll road shall be deposited in the Toll Road Fund and used to:

(1) retire certain outstanding bonds and pay amounts owed by the authority with respect to a public-private agreement;
(2) fund projects identified in the Indiana Department of Transportation (INDOT) long-range comprehensive transportation plan;
(3) fund roads, bridges, public transit facilities and equipment, airports, and other projects designed to facilitate the movement of people, goods, services, and information in the counties that are traversed by a toll road project and the cities and towns in those counties; and
(4) fund distributions to the NWIRDA or fund other projects authorized to be undertaken by NWIRDA under existing law.

The bill provides that money remaining in the Toll Road Fund after all other required distributions shall be transferred to the Major Moves Construction Fund.

Use of Tollway Revenues: It provides for the distribution of revenues from a public-private agreement with respect to a tollway to the Major Moves Construction Fund, to the State Highway Fund, to INDOT for use on other projects designated by INDOT, or to the operator, the Authority, or INDOT for debt reduction.

Route Consideration: The bill requires the Authority to consider routes for certain projects that have the least disruptive influence on established businesses and residents.

Prohibited Political Contributions: The bill prohibits the operator under a public-private agreement or a person having an interest in the operator from making political contributions to state, local, or legislative candidates or certain political committees.

Northeast Indiana Regional Development Authority: It establishes the Northeast Indiana Regional Development Authority (NEIRDA) for Elkhart County, LaGrange County, and Steuben County. It also authorizes distributions to the Northeast Indiana Regional Development Authority and provides for additional distributions to the Northwest Indiana Regional Development Authority from the Toll Road Fund.

Technical and Conformance: The bill requires the display of a United States flag at each toll collection facility. It makes technical corrections and conforming amendments.

Retroactive Authorization: It validates any action taken with respect to public-private agreements entered into by the Authority before the effective date of this bill that would have been valid under this bill.

State Board of Accounts Audit: It requires the State Board of Accounts to audit the accounts and records concerning the operation of each toll road project by the Authority for each state fiscal year beginning after June 30, 1996, and ending before July 1, 2006.

Effective Date: Upon passage; July 1, 2006.

Explanation of State Expenditures: *Public-Private Agreements:* The bill establishes public-private agreements for toll road projects (including the existing Indiana Toll Road) and for future projects concerning tollway projects, including roads and bridges. The fiscal impact of these public-private agreements will depend on the circumstance of each proposed project. Positive fiscal impact will occur if the lease of a state asset garners more money than the long-term net revenues generated by the asset. Also, if the state transfers risk to another party for which the state would have to pay a premium or that has high probability for additional costs, the state could benefit from these public-private agreements. If the state accepts funds today in place of future revenues, the state loses the future income and the flexibility to accept new projects using that income.

Background on the IFA: The Indiana Finance Authority (IFA) is a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions.

Under current law, the IFA may construct, maintain, repair, police, and operate toll road projects in Indiana. In order to secure funds for these functions, the IFA may issue toll road revenue bonds of the state. Toll road revenue bonds do not constitute a debt of the state or of any political subdivision and are payable solely from the funds pledged for their payment or from an allocation of money from the Rural Transportation Road Fund, which is administered by the IFA.

The IFA is allowed, under current law, to contract with or lease to INDOT for construction, reconstruction, improvements, maintenance or repairs, or operation of toll projects or toll bridges. The statute also allows for the IFA to determine under IC 8-23-7 that a toll road project constructed or operated by the authority should become a part of the system of state highways free of tolls or become a tollway.

Background on Public-Private Agreements for Toll Road Projects: The bill requires the IFA to issue a request for proposal that must be published in accordance with IC 5-3-1. The IFA may negotiate with the responsible offerors in confidence and after receiving final offers make a preliminary selection or terminate the process. If a preliminary selection is made, the IFA must hold a public hearing and provide a written explanation of the basis for the selection at least 7 days before the public hearing. After these procedures are complete, the IFA may select the preliminary offeror as the operator.

The public-private agreement must be reviewed by the State Budget Committee and approved by the Governor prior to its execution. The public-private agreement may not exceed 99 years. It must contain either provisions for lease, franchise, or license of the toll road project or for management agreements or contracts to operate the toll road project. All real property and improvements must be owned by the IFA. The agreement must allow for monitoring maintenance practices and provide for corrective action. The agreement must establish the basis on which user fees may be collected by the operator. Also required are provisions that require compliance with state and federal laws and local ordinances, the grounds for termination, and the procedures for amendment. In addition, some of the other provisions that may be inserted in the agreement include review and approval of the operator's plans for development and operation, inspection of construction or improvements, the filing of appropriate financial statements by the operator, and financing obligations of the operator and the IFA.

The bill allows the operator to finance its obligation by issuing debt, equity, or other securities, entering into sale and leaseback transactions, and securing financing with a pledge of, security interest in, or lien on any user fees charged and collected for use of the toll road. Obligations issued shall not be considered to constitute a debt of the state or a political subdivision or a pledge of the faith and credit of the state or political subdivision.

For construction, the operator would not have to comply with state laws concerning public works or public works by state agencies, but would have to comply with provisions concerning minority business enterprises and women's business enterprises and, if specified in the public-private agreement, award contracts to Indiana businesses.

(Revised) The bill would allow the IFA to fix user fees and establish maximum amounts and provide for increases and decreases based on indices, methodologies, or other factors selected by IFA. The bill also requires that, until July 1, 2016, the user fees charged by the operator to motor vehicles that are owned or leased by individuals who reside in a county traversed by the Toll Road may not exceed the user fees for passenger vehicles that were in effect January 1, 2006. Based on the toll rate increases allowed in the Agreement (see below) and other assumptions concerning Toll Road revenue sources, this provision is estimated to result in reduced toll revenues of $150.0 M over the ten-year period. It is expected that IFA will make up the difference between the current toll rate and the January 1, 2006, toll rate for each trip taken.

The bill allows the IFA, the operator, and the Indiana State Police (ISP) to enter into an agreement to provide law enforcement and between the IFA and ISP related to the costs incurred to provide law enforcement.

Background on the Indiana Toll Road - The IFA leases the toll road to INDOT to operate and maintain the road in an efficient and economical manner, as allowed under current law. INDOT created a special Toll Road District to keep its work on the Toll Road separate from other state functions. The Indiana East-West Toll Road Project (Toll Road Project) - an accounting entity - pays rent to the IFA to meet its debt service. Once operating expenses, major expense fund requirements, and base rent are paid, any excess income is paid to IFA as additional rent. Revenues of the Toll Road Project are derived from tolls collected, rent payments from concessionaires, and investment income. Operating expenses are general administration, toll collection, road operations, various services including patrol services, major expense repairs and renovations, and depreciation expense. The following table shows operating results from the Toll Road Project from FY 1999 through FY 2005.

Operating Revenues and Expenses Indiana East-West Toll Road Project (In Millions)							
	FY 1999[a]	FY 2000[a]	FY 2001[a]	FY 2002[a]	FY 2003[a]	FY 2004[b]	FY 2005[b]
Operating Revenue							
Toll Receipts	$81.6	$84.8	$81.3	$82.5	$82.0	$85.1	$88.0
Concessionaire Rent	5.3	7.0	6.5	5.9	6.5	7.0	7.0
Other	1.1	1.1	0.7	0.9	0.5	0.6	0.8
Total Revenue	**88.0**	**92.9**	**88.5**	**89.3**	**89.0**	**92.7**	**95.8**
Operating Expenses							
Depreciation	10.1	10.4	11.1	3.4	3.1	3.1	3.6
Other Expenses	44.7	40.8	34.3	64.9	70.0	57.3	67.9
Total Operating Expenses	**54.8**	**51.2**	**45.4**	**68.3**	**73.1**	**60.4**	**71.5**
Nonoperating Income (Expense)	(14.0)	(10.0)	(8.1)	(12.6)	(15.0)	(13.9)	(12.6)
Net Income (Loss)	**$19.2**	**$31.7**	**$35.0**	**$8.4**	**$0.9**	**$18.4**	**$11.7**

[a]*State of Indiana Comprehensive Annual Financial Report* for the fiscal year.
[b]*Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.*

The cash flow statement provides information about changes in cash from the operating, financing, and investing activities of the entity. The total cash flow between FY 1999 and FY 2005 is $48.9 M, with operating activity providing positive cash flow each year. In five years of this seven-year period, the overall cash flow has been negative due to financing and investing activity.

Cash Flow Statement Indiana East-West Toll Road Project (In Millions)							
Cash Flow from ...	**FY 1999[a]**	**FY 2000[a]**	**FY 2001[a]**	**FY 2002[a]**	**FY 2003[a]**	**FY 2004[b]**	**FY 2005[b]**
Operating Activity	$36.1	$53.6	$52.0	$26.6	$20.2	$35.8	$28.4
Financing Activity	(38.2)	(55.8)	(52.7)	(25.2)	(33.3)	(45.7)	(47.1)
Investing Activity	(12.9)	88.5	(34.1)	84.8	(27.7)	(6.9)	2.5
Total	**($15.0)**	**$86.3**	**($34.8)**	**86.2**	**(40.8)**	**(16.8)**	**(16.2)**

[a]*State of Indiana Comprehensive Annual Financial Report* for the fiscal year**.**
[b]*Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.*

The Annual Report indicates that 91% of the Toll Road Project's lane miles were rated in good or better condition and 100% of the Toll Road Project's bridges were rated in good or better condition. None of the bridges were rated as substandard. The INDOT standard for road quality is 85% of the roads in good or better condition and for bridges the standard quality is that less than 1% of the bridges are rated as substandard.

IFA adopts rules for user fees that are primarily based on the number of tires or axles, but includes classifications for authorized trailer combinations, Michigan trains, special oversized or unusual vehicles, and commuters. The current toll rates were implemented on October 1, 1985, and provide for different rates based on the class of vehicle and the number of miles traveled. The user fee for a Class 1 passenger car or other light vehicle with four tires or two axles from the Portage Barrier, the furthest point west, to Eastpoint, the furthest point east, is $4.15, with the midrange trip costing $2.00. The user fee for Class 9 commuters is at a maximum $2.70, and the midrange trip is $1.30. In October 2005, there were 4,521 customers for the Class 9 user fee.

Net Present Value - The bill would allow the IFA to receive a one-time payment in the present instead of collecting a stream of net income over a period of time up to 99 years. (The Agreement calls for a lease period of 75 years, although the bill allows a lease period of up to 99 years). Positive fiscal impact would occur if the present value of the Toll Road lease is over and above the present value of the stream of net revenues that would otherwise have been received. Reasons that an offeror would pay more than the stream of cash flows include (1) the offeror can operate the Toll Road Project at a lower cost than the state, (2) the offeror can charge fees that are higher than the state would have charged, or (3) the offeror is willing to pay a premium for the rights to operate the Toll Road.

Conversely, the offeror may offer less because the costs to the offeror are higher than they are for the state. For example, the offeror's costs will include applicable taxes (see *Explanation of State Revenues*) and a profit for shareholders. These net cash flows will be discounted by the average investment rate of the offeror which could be higher or lower than the state's rate of investment.

The state recently proposed rules to raise the Toll Road tolls which will result in more revenue for the Toll Road Project. To the extent that costs remain constant, the future net income of the Toll Road Project could increase. However, the toll increase is based on the need for improvements to the Toll Road Project which will increase construction costs.

The calculation of the net present value of the project to the state and to an offeror requires management and engineering expertise to determine future costs for maintenance and improvements.

City of Chicago Skyway - The City of Chicago recently leased a major toll bridge connector to the city, the Skyway, for $1.8 B for 99 years to an Australian firm, Macquarie Bank. Although the Skyway meets up with the Toll Road Project, there are a number of differences that would not make the Skyway deal a model for the amount that may be paid to lease the Toll Road Project. First, the Skyway is 8 miles long with 1 bridge, whereas the Toll Road Project is 157 miles long with 331 bridges. Second, the City of Chicago completed $300 M in upgrades prior to leasing, and the Toll Road Project will require a $226 M road expansion, according to the IFA. Third, the Skyway toll revenue is reported by the IFA at $40 M versus $96 M in FY 2005 for the Toll Road Project. In revenue per mile, the Skyway earns $5.0 M and the Toll Road Project earns $611,000.

Background on Public-Private Agreements for Tollway Projects: The bill allows the IFA to develop, finance, or operate (or any combination) one or more public-private agreement projects related to tollway projects, including roads and bridges, that charge user fees. A project constructed or operated under this article is part of the state highway system. The public-private agreement may not exceed 99 years including extensions.

The bill establishes a competitive proposal procedure for the IFA to enter into public-private agreements. The process requires the IFA to hold a public hearing before awarding a public-private agreement. The IFA must submit a draft of a request for proposal to the Budget Committee for its review prior to issuance. The Budget Committee reviews the IFA determination of the successful offeror as operator and the Governor accepts the determination and designates the successful offeror.

The offeror must enter into a public-private agreement with the IFA. The IFA may decide the appropriate provisions for a particular qualifying project, including delivery of performance and payment of bonds or other security; review of plans; inspection of construction or improvements; maintenance of insurance; monitoring of maintenance; filing appropriate financial statements; compensation or payments to the operator; compensation or payments to the IFA; date and terms of termination; reversion of the qualifying project to the IFA; and rights and remedies of the IFA if the operator defaults. The bill allows the IFA to enter into preliminary agreements that do not include complete price, cost, payment, or revenue sharing.

The IFA will fix the maximum amount of user fees and provide for increases or decreases of the maximum amount. The public-private agreement may authorize the operator to adjust the user fees and to charge and collect user fees through manual and nonmanual methods.

The bill allows the IFA to make grants or loans from amounts received from the federal government or a state or local agency. It also provides for the IFA to take over qualifying projects at termination or expiration of the public-private agreement without pledging the full faith and credit of the state, any political subdivision, or the IFA.

The bill provides for the IFA and INDOT to enter into memoranda of understanding (MOU) with respect to the implementation and administration of a public-private agreement. The MOU may provide that INDOT has responsibility and administers and oversees the public-private agreement.

The plans and specifications for a public-private agreement project must comply with INDOT's standards for other projects of a similar nature and any other applicable state or federal standards. However, a construction project is not required to comply with state public works statutes or statutes concerning purchases of supplies and materials.

IFA or INDOT may support private entity applications to obtain federal, state, or local credit assistance for qualifying projects, or take actions to obtain federal, state, or local assistance for a qualifying project. The IFA may issue bonds, debt, other securities, or other financing. The bonds or notes issued do not have to comply with certain requirements already in statute concerning approval by the commissioner of INDOT and the Budget Agency, the weighted average life of the project, and the average weighted life of the bond.

Law enforcement officers of the state and of local jurisdictions have the same powers and jurisdiction within the limits of a qualifying project as they have in their respective areas of jurisdiction. The IFA may enter into arrangements with the ISP related to costs incurred providing law enforcement assistance under this article.

(Revised) *Northwest and Northeast Indiana Regional Development Authority Payments:* Under current law, the IFA is required to make payments between \$5.0 M and \$10.0 M in CY 2006 and CY 2007 to the Northwest

Indiana Regional Development Authority (NWIRDA) in equal quarterly payments. If the Toll Road is leased or sold before January 1, 2008, the State Treasurer, in CY 2007, is required to make a payment of $20.0 M minus any payment already made. The payment would come from the state General Fund. The bill would allow the payments to be made from the Toll Road Fund or the state General Fund. This provision could reduce expenses to the state General Fund arising from the lease or sale of the Toll Road. Also under the bill, in addition to the existing payment, between CY 2008 and CY 2015, the State Treasurer would pay an amount equal to $10.0 M a year. These payments would be made from the Toll Road Fund.

Additionally, the bill requires the IFA to pay the Northeast Indiana Regional Development Authority (NEIRDA) between $5.0 M and $10.0 M in calendar years 2007 and 2008 from revenues accruing from the Toll Road. If the Toll Road is leased or sold before January 1, 2008, the State Treasurer, for CY 2007, is required to make a payment of $10.0 M minus any payment already made, and from CY 2008 to CY 2016, an annual payment of $10.0 M. These payments may be made from the state General Fund or from the Toll Road Fund.

Background: As of December 2005, the IFA approved a $10 M allocation to the NWIRDA in 2006 from the Toll Road General Reserve Fund. Therefore, the maximum remaining liability would be $10 M. There has been no allocation to NEIRDA.

Moral Obligation: For tollway projects undertaken with public-private agreements, the IFA may issue bonds or debt for a qualifying project. The funds may be mixed and aggregated with funds provided by an operator. The bill stipulates that the issue does not constitute a debt of the state or a pledge of the faith and credit of the state or any political subdivision. However, the bill also allows for a moral obligation to be created with the review of the Budget Committee and the approval of the budget director. If the project does not provide revenues sufficient to repay bonds or notes, the General Assembly could be asked to make appropriations from the state General Fund.

Revenue Bonds - To date, bonds issued by the IFA have been revenue bonds, secured by the revenues generated from tolls. However, the lease agreement between IFA and INDOT dated September 1, 1985, states:

> If there still remains a deficit in Revenues….then the Department within 30 days will promptly report and request approval of the Transportation Coordinating Board and the State Budget Agency for the submission of a bill either as a part of or as an amendment to the budget bill providing an appropriation by the General Assembly to the Department of funds for the purpose of and in amounts sufficient to pay the obligations of the Department under this Lease…

It is understood that this lease language and other language in the covenants of the revenue bonds that the revenue bonds could represent a moral obligation of the state. The state has risk to the extent that the Toll Road Project would fail to earn sufficient revenue to pay the debt service and a default on outstanding bonds would affect the state's bond rating. Any additional bonds that the IFA may issue for road construction projects may establish the same sort of moral obligation and expose the state to this risk of financial responsibility.

User Fees and Enforcement Procedures: The bill exempts IFA from some of the requirements of rule making procedures including public notices and hearings, a one-year completion time, small business provisions, and approval from the Attorney General and the Governor. Also, the bill makes rules adopted by the IFA expire at the date set by the IFA. It is expected that making emergency rules will incur minimal additional administrative costs for the IFA.

Background on Enforcement Procedures: By establishing enforcement procedures for nonpayment of tolls, the bill clears the way for use of electronic toll collection devices. Currently, the Toll Road operates as a closed barrier system between miles 1 and 23, and as a closed ticket toll collection system between miles 24 and 153. The Toll Road has computerized collection equipment and has begun to establish infrastructure to move towards an electronic system. Using electronic technology could reduce the number of toll collectors needed and reduce maintenance and operation costs for toll collection stations.

Indiana Department of Transportation: The bill allows INDOT to adopt rules to establish an electronic tolling program and to include restrictions on the use of one or more lanes on any part of a tollway. The rules may be adopted under the provisions for adopting emergency rules to implement public-private agreements. Administrative costs for INDOT could minimally increase as a result.

State Board of Accounts Audit: The bill requires the State Board of Accounts to audit or cause to be audited the IFA's accounts, books, and records at the IFA's expense. There should be no increased cost to the state for the audit.

Background on State Board of Accounts Audit: The annual report of the East-West Toll Road Project is audited by Crowe Chizek and Company LLC who issues an opinion on the financial statements. Additionally, the Toll Road and Toll Bridge financial statements appear in the Enterprise Fund section of the *State of Indiana Comprehensive Annual Financial Report* (CAFR) and the Transportation Finance Authority Bonds financial information is in the Internal Service Funds section. The CAFR is audited by the State Board of Accounts.

Prohibited Political Contributions: There are no data available to indicate how many offenders may be convicted of knowingly or intentionally making a contribution to a candidate or a committee in the term during which the operator is a party to a public-private agreement or three years after the final expiration or termination of the agreement. A Class D felony is created for toll road projects and for tollway projects.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was $20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately $1,825 annually, or $5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: An offer of $3.85 B was accepted by the IFA for a 75-year concession to operate the Indiana Toll Road. The terms and conditions of the Agreement between IFA and the concessionaire do not require ratification by the General Assembly. However, the bill will make actions taken before the effective date of the act legal and valid that would have otherwise been valid under this bill.

This section provides information on the distribution of funds received from the Agreement and a summary of the Agreement. It also provides a description of the distribution of future funds that may be received from a tollway project and other sources of revenue.

Use of Revenues from Toll Road Revenues: The bill establishes the Toll Road Fund consisting primarily of money received from an operator under a public-private agreement but may include appropriations of the General Assembly. The money in the fund is allocated to one of three accounts within the Fund. The Bond Retirement Account contains the amount necessary to repay, defease, or otherwise retire bonds selected by the IFA; the Administration Account is the amount necessary to pay amounts owed by IFA for performance of a public-private agreement; and 34% of the remaining money received during the state fiscal year is placed in the Eligible Project Account. Money allocated to Eligible Project Account is distributed for eligible projects to INDOT, NWIRDA, NEIRDA, and eligible political subdivisions. Eligible political subdivisions are defined as those counties through which the Toll Road Project traverses. After all distributions are made, any remaining amount is transferred to the Major Moves Construction Fund (see below).

With approval of at least 75% of the House of Representatives and the Senate, the money in the Fund may be directed to another purpose than those specified above.

Northwest and Northeast Indiana Regional Development Authority Payments - If the Toll Road is sold or leased before January 1, 2008, payments to NWIRDA and NEIRDA may be made from the Toll Road Fund or the state General Fund. The payments come from the Eligible Projects Account. If any use of the Fund would result in there being insufficient funds to make payments to NWIRDA or NEIRDA, an act passed by at least 75% of the House of Representative and the Senate may stop the use or withdrawal.

Background on Bonds Series Outstanding: Money received from a public-private agreement would be used to pay off bonds selected by IFA. The total outstanding balance on bonds issued for the Toll Road Project is currently valued at $198.7 M. IFA estimates that the penalties for early payments of bonds at about $4.0 M. The balance and payment schedule of the outstanding revenue bonds issued by IFA for the Toll Road Project are as follows.

Bond Issue	**Long-term Liability June 30, 2004 (In Millions)**	**Long-term Liability June 30, 2005 (In Millions)**
Series 1985	$26.2	$26.2
Series 1987	$43.2	$43.3
Series 1993	$18.0	$9.3
Series 1996	$121.6	$119.9
Total	**$209.0**	**$198.7**
Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.		

Revenue Bond Repayment Schedule Year-Ending June 30, (In Millions)							
	2006	**2007**	**2008**	**2009**	**2010**	**2011-2015**	**2016**
Principal	$13.7	$14.5	$15.4	$16.3	$17.1	$101.2	$26.2
Interest	11.3	10.5	9.5	8.5	7.7	22.5	0.8
Total	**$25.0**	**$25.0**	**$24.9**	**$24.8**	**$24.8**	**$123.7**	**$27.0**
Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.							

Potential Distribution of Revenues: Under the Agreement (see description below), a one-time payment of $3.85 B would be received at signing. Using the long-term liability balance for June 30, 2005, and the revenue bond repayment schedule for FY 2006, the amount of long-term liability is estimated to be $173.7 M at the time of closing. If IFA selects all bonds for payment, this amount would be placed in the Bond Retirement Account. It is also estimated that IFA will have projects to complete prior to closing that may cost $12.6 M, and IFA will have to make payments to Goldman Sachs for services on the Agreement with a preliminary estimate of $17.3 M. This would reserve at least $29.9 M for the Administration Account*. Of the remaining amount, 34%, or $1.24 B, would be reserved for the Eligible Projects Account, and $2.41 B would transfer to the Major Moves Construction Fund.

*[*Note:* These amounts are based on the testimony received by the House Ways and Means Committee and information available in Schedule 4.1 of the Agreement. Additional costs that have not been identified could increase the amount placed in the Administration Account, including charges, costs, and expenses that are prorated between IFA and the concessionaire at the time of closing].

Use of Tollway Revenues: Revenues received from a public-private agreement for a tollway project, over and above amounts repaying loans, grants, or reimbursement of services are distributed by the IFA to the Major Moves Construction Fund, to INDOT for deposit in the State Highway Fund, to INDOT for projects designated by INDOT, or to the operator or IFA for debt reduction. There are no data to indicate how much money may be generated from yet unspecified public-private agreements for tollway projects.

Major Moves Construction Fund Background: The bill establishes the Major Moves Construction Fund which includes distributions from the Toll Road Fund, payments made to the IFA or INDOT from public-private agreements for the existing toll road or new projects, appropriations to the fund, gifts, grants, loans, bond proceeds, interest, premiums, or other earnings. IFA will administer the Fund, distributing money in the Fund for: (1) obligations of the IFA, INDOT, or an operator in connection with the execution and performance of the public-private agreement, including reserves; (2) lease payments to IFA, (3) funds to the State Treasurer for deposit in the State Highway Fund for other projects in the INDOT transportation plan, and (4) other highway facility and transportation infrastructure as determined by INDOT. With the approval of 75% of the House of Representatives and 75% of the Senate, money in the Major Moves Construction Fund may be used for a purpose other than a purpose specified above.

Motor Vehicle Highway Account - In addition, from the Major Moves Construction Fund, $50.0 M per year during 2006, 2007, and 2008 will be distributed to the State Treasurer to be placed in the Motor Vehicle Highway Account of the state General Fund. Counties, cities, and towns eligible to receive funds under current law will receive these funds in the same proportion as other funds that are distributed from the Account. Eligible counties, cities, and towns may use the funds for the purposes as currently allowed in law.

Indiana Department of Transportation: The bill enables INDOT to increase the revenues it receives by allowing INDOT to fix fees or charges in addition to tolls and by expanding the services to which these tolls, fees, or charges may be applied. In association with establishing an electronic tolling program, the bill allows INDOT to fix fees for the initiation, administration, and maintenance of customer accounts, late payment procedures, and for equipment used by customers in connection with electronic tolling. It allows INDOT to retain and use tolls, fees, or charges. The bill also expands INDOT's ability to fix tolls for tollways giving it powers similar to IFA for setting tolls on the Toll Road.

Tax Status for Toll Road Projects: The bill is not expected to change the revenues received from property tax related to property that is part of a toll road project. However, increases could occur from increases in Sales and Use Tax on tangible personal property that is purchased by the operator. Since the Toll Road is operated by a state agency, purchases are not currently subject to retail Sales or Use Tax. Based on past financial data, the IFA estimates an average of about $3.4 M a year in FY 2006 and FY 2007 in purchases that would be subject to the state's 6% Sales Tax. This would result in about $200,000 of additional revenue in those years. (Information is not available for other purchases for construction of infrastructure since some of these materials may be exempt from Sales Tax, similar to manufacturers' purchases of manufacturing inputs.)

Tax Status for Tollway Projects: The bill is not expected to affect revenue received from property, Sales, or Use Taxes on property, or purchases that become part of the structure or land of a tollway. Governmental units do not pay Sales or Use Tax. Under current law, any property involved in a tollway is not subject to property tax since the operation of the tollway is considered an essential government function. Under the bill, the operator of a public-private agreement would not be required to pay any property tax on property or property interest acquired by the operator. Also, the purchase of any tangible personal property for incorporation or improvement of a structure or facility or land of a tollway is exempt from the Sales and Use Taxes.

Income Tax: The bill provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities. There are no data available to indicate how much would be collected.

Class C Infractions: Violation of an enforcement rule promulgated by the IFA or INDOT is a Class C infraction. Also, the bill creates a Class C infraction for a person who passes a toll gate without paying. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is $500, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of $70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Prohibited Political Contributions: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is $10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the $120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Background on the Agreement Concerning the Indiana Toll Road: In October 2005, IFA issued a request for proposal to lease the Toll Road Project. There were 11 proposals submitted, 9 bidders considered, and 4 final bids. On January 23, 2006, the concessionaire, Statewide Mobility Partners LLC (SMP), was selected to operate the Toll Road Project. SMP is a consortium that includes Macquarie Bank, an Australian bank, and Cintra, a Spanish firm. The winning bid was $3.85 B, and the lease will last 75 years.

The Agreement contains specific details of the deal, but does not require the ratification of the General Assembly. However, the Agreement indicates that the Indiana General Assembly has enacted Toll Road legislation that (1) does not contain any provision that is adverse to the Toll Road Operation or the concessionaire pursuant to the Agreement; (2) fully exempts the concessionaire from property taxes related to ownership of the Toll Road; (3) provides moral obligation of the state to provide funds for IFA to comply with payments required under the Agreement; and (4) expressly authorizes IFA to grant the concessionaire franchise and license to provide Toll Road services. The bill will make actions taken before the effective date of the act legal and valid that would have otherwise been valid under this bill.

Some of the key points of the Agreement are summarized here. This description is in no way complete, but rather provides some of the details that may be important to legislators.

According to the offer document, the offer is secured by one or more letter(s) of credit in the aggregate amount of $75 M. Under the Agreement, the letter(s) of credit equal to 10% of the rent must be deposited to securitize the Agreement. If SMP does not execute the Agreement, the IFA may draw on the letter(s) and retain the amount. The offer also allows for adjustment of the offered amount by 0.10% ($3.85 M) for every one basis point change in the 10-year Treasury yield. This adjustment could increase or decrease the amount offered from January 19, 2006, until the day before execution of the Agreement.

Under the terms of the Agreement that will be signed on June 30, 2006, at the offices of Ice Miller LLP, the concessionaire will be granted an exclusive franchise and license to provide Toll Road Services, including operating, managing, maintaining, rehabilitating, and tolling the Toll Road in exchange for a wire transfer of the amount of rent less any cash deposit previously paid in same-day funds. For federal and state tax purposes, the lease of the Toll Road is considered a sale.

The concessionaire is entitled to all tolls collected in accordance with a maximum toll schedule which is also part of the Agreement, and to revenues generated from vendors. Any revenues generated by other activities including mass transit facilities, permits, fees payable to the state, the sale of alcohol, the installation of utilities or similar services and safety measures, and the erection of billboards is the property of the state or IFA. When electronic tolling is established, the concessionaire will receive 50% of any fine collected for passing a toll gate without paying, a Class C infraction created by the bill. The concessionaire must use the revenue from tolls for debt service and operation and maintenance costs before making a distribution to any equity holders.

In addition to the rent, on closing day, the concessionaire will pay the Indiana State Police (ISP) $5.0 M for capital improvements and equipment including 50 vehicles and vehicle equipment. The concessionaire will also make equal quarterly payments to IFA totaling $6.0 M a year to reimburse ISP services. The concessionaire shall not hire private security services, and ISP must provide traffic law enforcement services on the Toll Road at the same level as it provides on state streets and roadways.

(Revised) Under the Agreement, the concessionaire has the right to establish, collect, and enforce payment of tolls. The concessionaire must notify the IFA 90 days prior to implementation of any change and must raise rates in accordance with the schedule put forth in the Agreement. Notice to the public is required 60 days prior to implementation. The Agreement sets the maximum toll and through-trip rate per mile for Class 2 users through June 30, 2010, at $8.00, or a $0.0510 through-trip rate per mile. For other user classes, the maximum toll and through trip rate per mile will increase through June 30, 2010. Also, the maximum toll levels for all user classes for trips other than through trips is provided in the Agreement.

(Revised) The concessionaire may increase the maximum toll level after June 30, 2010, by the initial applicable percentage toll increase. The initial increase is the greater of (A) 8.2%, (B) the percentage increase compounded annually of the Consumer Price Index - U.S. City Average for all Urban Consumers, All Items, not seasonally adjusted (CPI) or (C) the percentage increase compounded annually of the Per Capita Nominal Gross Domestic Product, in current dollars, not seasonally adjusted (GDP). These rates are measured for each year between 2006 and 2009. They are measured from January 1 to December 31. After the initial increase in maximum toll levels, each year the maximum will increase by the greater of (A) 2.0%, (B) the percentage increase of the CPI, or (C) the percentage increase of the per capita nominal GDP. The percentage increase is measured from January 1 to December 31.

Historic Information on CPI and GDP - The following table shows the annual percentage change in CPI and GDP from 1976 to 2005. The CPI and GDP in the table most closely reflect the adjusting factors that will be used under the Agreement to adjust the maximum toll. These historic factors are compared in the table to the 2% base rate increase in the Agreement, and the percentage change that would have applied to increasing the maximum toll in a given year is checked. Over this 30-year historic period, the average percentage increase compounded annually would have been 6.32%.

Historic Comparison of Increase in CPI and GDP with Minimum 2% Increase			
Year	**CPI**	**GDP**	**2%**
1976	5.77%	✓10.32%	2.00%
1977	6.45%	✓10.16%	2.00%
1978	7.66%	✓11.80%	2.00%
1979	✓11.26%	10.48%	2.00%
1980	✓13.52%	7.57%	2.00%
1981	10.37%	✓11.04%	2.00%
1982	✓6.13%	3.06%	2.00%
1983	3.22%	✓7.67%	2.00%
1984	4.26%	✓10.24%	2.00%
1985	3.57%	✓6.35%	2.00%
1986	1.92%	✓4.79%	2.00%
1987	3.65%	✓5.26%	2.00%
1988	4.08%	✓6.71%	2.00%
1989	4.80%	✓6.44%	2.00%
1990	✓5.41%	4.63%	2.00%
1991	✓4.24%	1.96%	2.00%
1992	3.01%	✓4.30%	2.00%
1993	2.95%	✓3.69%	2.00%
1994	2.61%	✓4.95%	2.00%
1995	2.82%	✓3.37%	2.00%
1996	2.94%	✓4.44%	2.00%
1997	2.32%	✓4.98%	2.00%
1998	1.56%	✓4.11%	2.00%
1999	2.19%	✓4.76%	2.00%
2000	3.37%	✓4.76%	2.00%
2001	✓2.83%	2.11%	2.00%
2002	1.58%	✓2.34%	2.00%
2003	2.28%	✓3.77%	2.00%
2004	2.67%	✓5.91%	2.00%
2005	3.39%	✓5.33%	2.00%

From the acceptance of the letter until the closing, IFA must operate the Toll Road in a manner consistent with past practices and to maintain goodwill. The concessionaire is accepting the Toll Road "As Is", since the concessionaire has inspected the Toll Road.

The concessionaire is responsible for all aspects of Toll Road operations and must cause the Toll Road to be operated in accordance with the Agreement and applicable laws. It must be open and operational 24 hours a day, every day. The concessionaire is subject to the right of IFA to monitor compliance with the Agreement to ensure the Toll Road is used and operated as required by the Agreement. The concessionaire may designate another person to be the operator, as long as IFA has received the required information and has given its approval.

Under the agreement, the concessionaire must provide, at its expense, the following mandatory expansion requirements: (1) Implement a barrier-controlled electronic toll collection within two years of closing; (2) by December 31, 2008, expansion to three lanes in each direction from mile 14.0 to mile 15.5; (3) by December 31, 2010, expansion to three lanes in each direction from mile 10.6 to mile 14.0 and lowering the Toll Road elevation to accommodate the flight path of Gary Chicago International Airport; and (4) by December 31, 2007, expansion to three travel lanes in each direction from mile 18.5 to mile 20.27.

The concessionaire may not do any thing that will create an encumbrance against the Toll Road. Further, if the concessionaire requests additional land for the purpose of an expansion (the building, erection, construction, installation, alteration, modification, or replacement of any structure, facility, or other improvement of any kind), it must seek the approval of IFA. If IFA approves, IFA completes the proceedings necessary to acquire or condemn the additional land. All costs of acquisition or condemnation are borne by the concessionaire.

The concessionaire must provide IFA with a written traffic study each year on or before July 1. The minimum level of service (LOS) that the concessionaire must maintain is LOS D in urban areas and LOS C for rural areas. The concessionaire is required to expand the Toll Road to maintain these levels, only to the extent that there is land available for expansion. If the IFA decides to acquire land so that an expansion may occur, then IFA is responsible for 50% of the costs incurred to acquire the land.

The concessionaire is also responsible for providing: (1) quarterly traffic characteristics reports including traffic forecasts for the upcoming three months, current LOS, and actual traffic counts; (2) incident management notifications and reports; (3) environmental incident reports; and (4) financial reports including unaudited semiannual financials within 60 days of the end of the period and annual audited financials within 120 days of the end of the reporting year.

The Agreement applies federal and state nondiscrimination laws, minority and woman business enterprise laws, and Buy Indiana presumptions, and it requires the concessionaire to maintain a drug-free workplace. The concessionaire must abide by all ethical requirements that apply to persons who have a business relationship with the state.

Explanation of Local Expenditures: *Prohibited Political Contributions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately $44.

Explanation of Local Revenues: *Northwest Indiana Regional Development Authority Payments:* Under current law, the NWIRDA will receive up to $20 M from the IFA. The funds received may be used for any purpose of the NWIRDA. As of December 2005, the IFA approved a $10 M allocation to the NWIRDA in 2006 from the Toll Road General Reserve Fund. This bill guarantees if the Toll Road Project is sold or leased, the remaining liability would be covered from the state General Fund or the Toll Road Fund. The maximum remaining liability is $10 M.

Use of Revenues from Toll Road Revenues: Each year, the Northwest Indiana Regional Development Authority may submit a request to IFA for a distribution from the Eligible Projects Account of the Toll Road Fund for projects to be carried out during the fiscal year. The IFA will make distributions to the Development Authority Fund.

Also, eligible political subdivisions may submit requests to INDOT for a distribution of funds from the Eligible Projects Account. INDOT may approve, modify and approve, or reject a request. The IFA will make distributions to the fiscal officer of the city, town, or county for an eligible project. There are no data to indicate how much money may be available for local units.

Motor Vehicle Highway Account: Counties, cities, and towns eligible for distributions from the Motor Vehicle Highway Account will be eligible to receive a proportional share of $50 M per year during 2006, 2007, and 2008, which is distributed from the Major Moves Construction Fund. The distribution will be in the same proportion as other funds that are distributed from the Account. Eligible counties, cities, and towns may use the funds for the purposes as currently allowed in law. An estimate of the amounts that will be distributed to each eligible county, city, or town is available through Legislative Services Agency.

Northeast Indiana Regional Development Authority: The bill establishes the NEIRDA as a separate body corporate and politic to (1) acquire, construct, equip, own, lease, and finance projects and facilities for lease or benefit of eligible political subdivisions; and (2) fund and develop airport authority projects and services, regional transportation authority projects and services, and economic development projects in the eligible counties.

NEIRDA assists in the coordination of local efforts concerning projects, assists an airport authority and a regional transportation authority in coordinating regional transportation and economic development, and funds projects as provided. NEIRA is authorized to make loans, loan guarantees, or grants, or provide any other funding or financial assistance for projects. The bill requires NEIRDA to comply with common construction wage, public purchasing, and public works project requirements under state statute, and any applicable federal bidding statutes and regulations. The bill authorizes NEIRDA to issue bonds, but requires the bonds to be sold to the Indiana Development Finance Authority.

NEIRDA is governed by a nine-member board consisting of: (1) three members appointed by the Governor; (2) one member each appointed by the county executives of Elkhart, LaGrange, and Steuben Counties and (3) one member appointed by the county fiscal bodies of Elkhart, LaGrange, and Steuben Counties. After the initial terms, all the members of the NEIRDA Board will serve 4-year, staggered terms. Board members are not entitled to receive any compensation except for per diem for the member's participation in Board meetings.

The Board is required to establish and administer the Development Authority Fund. The Fund consists of the distributions from the Toll Road Fund, funds received from the federal government, appropriations by the General Assembly, other local revenue appropriated by a political subdivision, and gifts, donations, and grants. Money in the Fund is used to carry out the purposes of NEIRDA.

The bill specifies that NEIRDA (1) must issue an annual report to the Legislative Council, the Budget Committee, and the Governor concerning its operations and activities; and (2) must develop a comprehensive strategic development plan regarding proposed projects and their financial requirements and impacts. The bill requires NEIRDA to submit the plan before January 1, 2009, for review by the Budget Committee and approval by the Director of OMB; (3) NEIRDA also must pay for an annual financial audit performed by a CPA under contract with the OMB. Distribution of funds from the Toll Road Fund is contingent on NEIRDA completing a comprehensive strategic development plan and having it approved.

Class C Infractions and Prohibited Political Contributions: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the $70 or $120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A $3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A $2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Transportation; Indiana State Police; State Board of Accounts; State Treasurer; Auditor of State.

Local Agencies Affected: Trial courts; Local law enforcement agencies; All cities, towns, and counties.

Information Sources: *Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004; State of Indiana Comprehensive Annual Financial Report, FY 1999-FY 2003; Indiana Toll Road, Request for Toll Road Concessionaire Proposal;* Ryan Kitchell, Director Public Finance, 317-233-4334; Bureau of Economic Analysis, *Table 7.1, Selected Per Capita Product and Income Series in Current and Chained Dollars [Dollars] Seasonally adjusted at annual rates* available at www.bea.gov; Bureau of Labor Statistics, Consumer Price Index for all Urban Cities, available at www.bls.gov.

Fiscal Analyst: Karen Firestone, 317-234-2106.